HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P.2532 of 2001 (SS)

Jagat Singh vs. Lok Nirman Vibhag & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 8.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 2532 of 2001 (SS)
(Old No. 45223/2000)

1. Jagat Singh S/o Sri Hukum Singh
2. Gulab Singh son of Sri Sher Singh
3. Anand Ballabh s/o Sri Bheem Dutt
4. Madan Mohan Singh s/o Prem Singh
5. Amar Singh s/o Trilok Singh
6. Hayat Singh s/o Kalyan Singh
7. Nath Singh s/o Sri Anoop Singh
8. Umed Singh s/o Putta Singh
9. Chait Ram s/o Shanker Dutt
10. Laxman Singh s/o Prem Singh
11. Ratan Singh s/o Prem Singh
12. Joga Singh s/o Sri Kalyan Singh
13. Shivraj Singh s/o Prem Singh
14. Deewan Singh s/o Sri Bheem Singh
15. Hayat Singh s/o Sri Umed Singh

Versus

1. Lok Nirman Vibhag through Pramukh Abhiyanta, Lucknow
2. Mukhya Abhiyanta (Parvatiya Samanvaya) Lok Nirman Vibhag, Almora
   Adhishashi Abhiyanta, Prantiya Khand, Lok Nirman Vibhag, Pithoragarh
2. Ashishashi Abhiyanta, Nirman Khand
   Lok Nirman Vibhag, Lohaghat, Champawat

…….. Respondents

Writ Petition No. 295 of 2002 (SB)

1. Kedar Singh s/o Sri Nath Singh
2. Madan Singh s/o Sri Keshar Singh
3. Jiwa Nand s/o Sri Khushal Dutt
4. Bahadur Singh s/o Sri Dharam Singh

Versus

1. State of Uttaranchal
2. Chief Engineer, P.W.D. Dehradun
3. Chief Engineer 1st, P.W.D. Dehradun
4. Chief Engineer, P.W.D. Almora
5. Executive Engineer P.W.D. Pithoragarh
6. Executive Engineer, P.W.D. Lohaghat
   District Champawat. ……. Respondents

Sri Rajendra Dobhal, Advocate for the petitioners
Standing Counsel for the respondents.

Dated:-08.12.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The petitioners have filed the present writ petitions for the issue of a writ order or direction in the nature of mandamus directing the respondents no.2, 3 & 4 to treat the petitioners as regular employees of the department and pay them salary as it is being given to the petitioners in pursuance of the order dated 15.10.1997 with all the benefits available to the regular employees of the department in the corresponding cadre.

Brief facts giving rise to the present writ petition are that the petitioners were appointed on daily wages on the posts of Meth and Beldar in Public Works Department and they were made work charge employees of the department between 1983 and 1988 and since then they are continuously working in the Public Works Department.

That State of U.P. has issued a G.O. on 15.10.1997 in respect of regularisation of the work charge employees of the department who are working continuously for the last several years. According to G.O. as work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularised on the post held by them. The relevant clause of the G.O. is mentioned below:

कार्य प्रभारित कर्मियों जिनकी निरन्तर संन्तोषजनक सेवायें विभाग में दिनांक 31. 31.3.1997 को पॉच वर्ष या इससे अधिक हो गयी हों एवं अब तक निरन्तर कार्यरत हो तथा जो वर्कचार्ज पर नियुक्त कर प्रतिबन्ध हेतु जारी कार्मिक विभाग के शासनादेश सं0 1085/का–1991 दिनांकित 29.8.1991 के पूर्व से नियुक्त हो को उपलब्ध नियमित पदों/रिक्तियों स्थाई एवं अस्थाई दोनेा प्रकृति के पद सम्मिलित हैं की सीमा तक नियमित कार्य प्रभारित अधिष्ठाान में रखने हेतु पात्र माना जाय । इस नियमित कार्य प्रभारित कर्मचारियों को राज्य कर्मचारियों की भॉति सभी सुविधायें अनुमन्य हों ।

The petitioners have stated that they have completed more than 5 years of service up to 31st of March 1997 and they were appointed as work charge employees prior to 29.8.1991.

On 3.7.1999 respondent no.2 has passed the order regularising the services of work charge employees on the vacant posts in terms of G.O. dated 15.10.1997 and since then the petitioners have been continuously working on their posts as regular employees and they are being paid salary.

All of a sudden respondent no.3 has passed the order on 10.10.2000 cancelling the regularisation order of the petitioners. In pursuance of the aforesaid order the petitioners were reverted from regular employees to work charge employees. The petitioners have pointed that the respondents have passed the order without giving any opportunity to the petitioners of being heard. Once order of regularisation was passed in favour of the petitioners it was necessary that the person who is affected should have been heard before cancelling the same.

According to the petitioners cancellation of the order will amount to civil consequences and as such opportunity of hearing should have been afforded to the petitioners before the impugned orders are passed.

State of Uttaranchal has filed a counter affidavit and has stated that regularisation of the petitioners was conditional but as there were limited number of posts approved by the Government, the Executive Engineer, therefore, was bound to revert the junior most work charge employees to their original status.

The petitioners have also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 Raj Narain vs. State of U.P. The Apex Court has observed as under:

"We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the establishment, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and in not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to the extent. An exercise of review in the cadre strength from year to year, therefore, becomes necessary because while of the one side the financial difficulties of the State has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two

competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to the reasonably good number of work charged employees who have been associated with State Department for long periods."

The petitioners have also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the posts of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

"So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly log spell- say two or three

years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job"

On account of cancellation of regularisation, the petitioners have suffered civil consequences, as held by the Apex Court in the case of State of Orissa vs. Dr. Binapani Dei and others AIR 1967 SC 1269. The Apex Court has observed that the administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The observations of the Apex Court are quoted below:

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession

of the authority, which is sought to be relied upon to his prejudice. For that purpose the person against whom any enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would , therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

The cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by this Court in Writ petition No.236 (SS) of 2000, Pooran Singh vs. State of Uttaranchal and others, relying upon the the Apex Court in Basudeo Tewari vs. Sido Kanhu University and others (1998) 8 S.C.C. 194 and

Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. Hon'ble Mr. Justice P.C. Verma has held as under:

"It is not disputed that the cancellation orders has been passed without any notice or pay in lieu of notice as required in condition No.2 of the regularisation orders contained in annexure No.1, therefore, cancellation orders have been passed without affording any opportunity of hearing to the petitioners. As the regularisation orders were passed in implementation of the Scheme contained in Govt. order dated 15.10.1997 after due selection and the petitioners were regularised against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dated 10.04.2000 is not acceptable.

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On account of cancellation of regularisation, the petitioners have suffered civil consequences, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary vs. Sido Kanhu University and others (1998) 8 S.C.C. 194. In Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. the Apex Court held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice."

In the case Smt. Maneka Gandhi vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

"In England, the rule was thus expressed by Byles J. in Cooper vs. wandsworth Board of Works: (1863)14 CB (NS) 180:

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam (says God), "where are thou? Hast thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

The judgment in the case of Menaka Gandhi (supra) has been followed in the case of West Bengal Electricity Regulatory Commission vs. C.E.S.E. Ltd. JT 2002 (7) SC 578, relying upon the

case of Mrs. Maneka Gandhi vs. Union of India & Another, 1978 (1) SCC 248 as under:

"The right of audi alteram partem is a valuable right recognised even under the India Constitution. See Mrs. Menaka Gandhi vs. Union of India and another, 1978 (1) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by courts."

The Apex Court in the case D.K. Yadav vs J.M.A. Industries Ltd; (1993) 3 SCC 259 has further held as under:

"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as

belong to every citizen of the state of country….. they include….. rights capable of being enforced or redressed in a civil action….. In State of Orissa vs. (Miss) Binapani Dei(1967) 2 SCR 625 this Court Held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284 AIR 1952 SC 75 per majority, a seven Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Menaka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing

cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken case to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets and requirements of natural justice."

Admittedly the orders of cancellation have been passed without affording any opportunity to the petitioners.

A writ of certiorari is issued quashing the orders passed by the respondents cancelling the regularisation of the petitioners.

However, the respondents are at liberty to pass fresh orders in accordance with the recruitment rules, if the respondents at any stage consider appropriate, after giving the opportunity of hearing to the petitioner.

With the aforesaid observations the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

8.12.2003
Dhyani